



STATE OF DELAWARE
DEPARTMENT OF FINANCE
DIVISION OF REVENUE
CARVEL STATE BUILDING
820 N. FRENCH STREET
WILMINGTON, DELAWARE 19801

DIVISION OF REVENUE
TAX RULING 92-1

FEBRUARY 10, 1992

SUBJECT: DEFINITION OF INTRASTATE TELEPHONE COMMUNICATION SERVICE

CODE SECTION AFFECTED: 30 Del. C. § 5501(1)(iii)

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Questions have been raised concerning the collection of taxes imposed by the provisions of Title 30 Del.C. Chapter 55 upon "cellular" mobile telephone services provided in this State. In a time of rapid expansion of the technology and services offered by the telecommunications industry, the broader question concerns the definition of "intrastate" as applied to the taxation of telephone communication services by this State.

BACKGROUND

Title 30, Chapter 55, sets forth a specialized scheme of public utilities taxes in Delaware. Section 5501(1) of that chapter provides a definition of a taxable "Public utility" as including ". . . (iii) intrastate telephone and telegraph communication services." The section goes on to explain that

"[a]ll such . . . services are included whether distributed directly by the distributor to the consumer within this State or distributed through an intermediary to the consumer or user within this State."

Under §5502(a) a tax is imposed upon all intrastate telephone commodities and services distributed within this State by the distributor at the rate of 4.25% of the sale price or tariff charge paid for such commodities or services.

Section 5503 states that

"(a) The tax imposed by § 5502(a) of this title shall be collected by the distributor from the ultimate consumer as a separate item not included in the sales price or tariff charge. . . ."

Section 5501(3) defines a "distributor" as including

"...any company, corporation, municipality, partnership, firm, association, cooperative or any person or group of persons which supplies the commodities or services subject to the taxes imposed by this Chapter for sale to ultimate consumers or users within this State."

Section §5506(e) provides an exemption from collection of the tax for residential consumers or residential users.

A. Application of Public Utilities Tax

It is the ruling of the Division of Revenue that communications services utilizing a network of radio receivers and transmitters organized as "cells" for the receipt and relay of voice or other source signals to or from mobile instruments, whether or not the signals are also transmitted through fixed lines or wires, and commonly known as "cellular mobile telephone services," constitute a type of telephone commodity and service subject to taxation under Title 30, Del.C. Chapter 55.

It is the further ruling of the Division of Revenue that all telephone commodities and services, including cellular mobile telephone services that originate and terminate in Delaware are subject to the tax imposed by 30 Del.C. §5502(a).

In the case of cellular mobile telephone service, the origin of service is determined by the location of the first cell site from which a call is initiated.

Charges for cellular mobile telephone service shall include "all" services including, but not limited to, any one-time activation fee associated with an initial service application, monthly access fees, and any charges for usage based upon the time used or the number of calls placed or received.

All "distributors" of cellular mobile telephone services are charged, pursuant to §5503, with collection of the tax imposed by §5502(a) from the ultimate consumer as a separate item not included in the sales price or tariff charge. Under §5503,

"the amount of tax thus collectible from the ultimate consumer shall in each case be calculated on the basis of a uniform percentage of the sale price or tariff charge payable by the ultimate consumer for the commodity or service which is subject to tax under this section. . ."

Pursuant to Section 5504(a), the taxes collected under this chapter during any calendar month shall be paid by the distributor

to the Division of Revenue of the Department of Finance within twenty days after the end of said calendar month.

There shall be a presumption that all cellular mobile telephone services are provided to nonresidential consumers or users unless it can be demonstrated that the services are charged to a service address which is a residence and which has no other telephone service.

B. Refunds.

Consumers or users of cellular mobile telephone services who claim an exemption from the tax may file a claim for refund with the Division of Revenue and shall be entitled to a refund of all tax collected by the Distributor under Title 30, Chapter 55, on such use upon a showing that, (1) The phone service was provided solely from their service address, and (2) their service address is also a residence, and (3) the service address has no other residential telephone service provided in the name of the claimant or of any other party; or that the call upon which the protested tax was assessed did not originate and terminate in this State.

C. Implementation.

1. Implementation of enforcement of this Tax Ruling will take effect for all cellular mobile telephone services rendered after February 29, 1992.

2. For tax periods from the effective date of this Ruling through July 31, 1992, the monthly collection of the tax will be against access and all other charges assessed against any customer with a Delaware "NPA-NXX" code excluding charges for calls whose origination or destination is either outside Delaware or which cannot be determined. It is recognized that this method of computing the tax will never result in more than the tax due under the statute and will in some instances result in less tax than would be the case were the tax to be computed in accordance with this Ruling. This paragraph is not intended to forgive the tax on the difference. For present purposes, however, remittance of the tax on the difference for services through July 31, 1992, is not required. After July 31, 1992, the tax will be administered as otherwise described in this Ruling.

3. The tax on that part of a customer's bill for the cost of providing cellular mobile telephone service shall be collected from the ultimate consumer only once. Where part of the cost of a customer's call includes the cost of providing cellular mobile telephone service and part of the cost of a call includes the cost of providing local exchange and line service, the tax on such call may, by agreement between the provider of the cellular mobile telephone service and the provider of the local exchange service, be collected as a single assessment upon the combined bill by

either provider, or may be collected by the respective service providers based upon the relative amounts of their bills. Such agreement must be filed with the Division of Revenue. Nothing in this paragraph shall, however, be construed to apply the tax against less than the full charge for the call, including the portion of the cost attributed to the cost of providing local exchange and line service.

A handwritten signature in dark ink, appearing to read "Robert W. Chastant", with a long horizontal flourish extending to the right.

Robert W. Chastant
Director of Revenue